

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLAIRE J. KAY and CLAYMORE
CONSTRUCTION CO.,

Case No. 09-11887

Plaintiffs/Counter-Defendants,

Honorable John Corbett O'Meara

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY d/b/a MUTUAL OF OMAHA
INSURANCE COMPANY,

Defendant.

**ORDER DENYING IN PART AND GRANTING IN PART
PLAINTIFFS' MOTION FOR COSTS AND ATTORNEYS' FEES**

This matter came before the court on Plaintiffs' May 14, 2015 Motion for Costs and Attorney's Fees. Defendant filed a response May 29, 2015; and Plaintiffs filed a response June 5, 2015. No oral argument was heard.

Following a second trial by jury, Plaintiffs were awarded two million dollars (\$2,000,000) in damages. Plaintiffs subsequently file this motion, seeking \$582,248.00 in attorneys' fees and \$11,303.70 in costs.

After the first trial in this case, this court had awarded Plaintiffs \$337,000 in attorneys' fees. However, that award was reversed on appeal by the United States Court of Appeals for the Sixth Circuit. The appellate court noted that under the American Rule, absent "specific statutory authority, or a party's bad faith or willful disobedience of a court order," each party is responsible for its own attorneys' fees. Kay v. United of Omaha Life Ins. Co., 562 Fed. Appx. 380, 386 (6th Cir. 2014). The Sixth Circuit added that this court

did not cite any statutory basis for the award of fees. Nor did the court characterize the fees as a sanction or give United any notice or opportunity to be heard regarding any potential sanction. (Nor do we see any basis for an award of fees as a sanction.)

Id. The ruling of the Sixth Circuit stands as the law of the case. Plaintiffs are not entitled to an award of attorneys' fees.

As for Plaintiffs' motion regarding costs, Defendant has indicated a number of categories of expenses that are to be excluded from a bill of costs. Some of Plaintiffs' requested costs are taxable, others are not. Therefore, Plaintiffs shall submit a Bill of Costs to the Clerk of the Court for determination of the allowable amount.

ORDER

It is hereby **ORDERED** that Plaintiffs' May 14, 2015 Motion for Costs and Attorney's Fees is **DENIED** as to attorneys' fees and **GRANTED** as to costs--the amount to be determined by the Clerk of the Court.

s/John Corbett O'Meara
United States District Judge

Date: April 6, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, April 6, 2016, using the ECF system.

s/William Barkholz
Case Manager